IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-953 of 2012

[Siddiqui Autos Motorcycle Dealer ……v…… Dr. Masooma Hasan & others]

C.P. No.S-954 of 2012

[Ashique Autos Motorcycle Dealers ……v…… Dr. Masooma Hasan & others]

C.P. No.S-936 of 2012

[Alam Autos Motorcycle Dealer ……v…… Dr. Masuma Hasan & others]

C.P. No.S-893 of 2012

[Faheem Akhtar & others ……v…… Dr. Masuma Hasan & others]

C.P. No.S-1010 of 2012

[Hani fur Rehman ……v…… Dr. Masuma Hasan & others]

C.P. No.S-1011 of 2012

[Mohammad Kaleem ……v…… Dr. Masuma Hasan & others]

C.P. No.S-1012 of 2012

[Wasim Ahmed ……v…… Dr. Masuma Hassan & others]

Dates of Hearing	:	11.01.2023 & 12.01.2023
Petitioners through	:	M/s. Khursheed Ahmed Qureshi, Waqas Ahmed, Advocates for the petitioners in their respective petitions present alongwith some of the petitioenrs.
Respondents through	:	Mr. Shahan Karimi, Advocate for Respondent No.1 a/w Mr. Muhammad Siraj Alam, Advocate.

O R D E R

Zulfiqar Ahmad Khan, J:- These petitions assail the concurrent findings of the learned trial Court dated 28.02.2011 as well as first Appellate Court dated 06.07.2011. Since these petitions are

interlinked, therefore, they were heard conjunctively and would be determined vide this common order.

2. The precise facts in *minutiae* are that the petitioners are tenants of respondent No.1 and they claim to have come to know through a publication in newspaper dated 11.04.2004 about pendency of rent proceedings against them. It is alleged by the petitioners that the respondent No.1 failed to serve notices as mandated under Section 18 of Sindh Rented Premises Ordinance, 1979 ("SRPO") and filed the ejectment proceedings before the learned Rent Controller which were allowed vide order dated 28.02.2011. The same were impugned by the petitioners before the learned Appellate Court by filing FRAs which were also answered in the favour of the landlady, hence the petitioners are before this Court against the concurrent findings of the Courts below.

3. The petitioners' entire case was premised on the argument that notices as mandated under Section 18 SRPO were not issued by the respondent No.1 to the petitioners. They further contended that in the said notice the petitioners were described as an encroacher and not as a tenant. Learned counsel for the respondent No.1 contended that the respondent No.1 filed eviction applications on the plea that she purchased the property in 1976 and having purchased the demised premises served notices upon the petitioners to meet the requirements of Section 18 SRPO and despite service of the said notice, the petitioners failed to pay the rent to the petitioners, hence the petitioners committed default, therefore, the ejectment proceedings were initiated against the petitioners which were allowed.

4. I have heard the respective learned counsel and have also considered the record to which attention of this Court was solicited. It is considered pertinent to initiate this discussion by referring to the settled law that the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed (by the lower Court) on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. Also it is the mandate of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but admittedly it is the trial court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the appellate court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Rent Controller went on to hold as under:-

> "In this regard the appellant/opponent admitted during cross examination is as under: **"It is correct that applicant is the owner/landlady of the building including the case shop since 1980"**. It is very surprising to the Court about the knowledge of the ownership of the respondent/applicant through publication on 11.04.2004, which is reproduced as under: **"I came to know about the change of ownership of the case shop through publication in daily Newspaper "NAWA-E-WAQT dated 11.04.2004"**. He has further admitted in his cross examination that: "**It is correct that from 11.04.2004 and till May, 2005 I have not paid the rent to the applicant directly although this fact has come in my knowledge that the applicant become owner of the case premises." From such evidence available on record it appears that the appellant/opponent started depositing the rent**

> **after committing willful, deliberate and intentional default of several months in payment of monthly rent has taken place on the party of appellant/opponent**."
>
> **By seeking guidance from above cited case law, I find that the default in payment of rent has proved against the appellant/opponent. Upshot of the discussion is that the appellant/opponent have failed to justify his contention and the findings drawn by the learned Rent Controller are outcome of the proper appraisal of the evidence, which require no interference by this Court**. The case law cited by the learned counsel for the appellant/opponent are distinguishable to the facts and circumstances of the case, consequently **I find no merits in the instant FRA No.113/2011, which is hereby dismissed with no order as to costs. The appellant/opponent is directed to vacate the peaceful possession of the rented premises and handover to the respondent/ applicant within sixty days after passing of this order**."
>
> [Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the petitioner had not disputed the ownership of the respondent No.1 as owner of the demised premises and the petitioner admitted that he could not tender rent to the respondent No.1 directly from 11.04.2004 till May, 2005 though they were in knowledge that respondent No.1 is the owner of the demised premises and they further went on to admit that they came to know about the change of ownership of the demised premises through publication in daily newspaper "Nawa-e-Waqt dated 11.04.2004. The contention of the petitioners' counsel hinges upon the fact that the respondent No.1 mentioned tenants as encroacher in the notice issued under Section 18 SRPO instead of tenant, in my view is purely semanticsal. In my view, it is well established principle that even when the notice sent under section 18 SRPO is not received, the initiation of rent proceedings in Court become sufficient notice to the tenant with regard to the change of

ownership and the tenant is liable to tender rent directly to the new landlord within 30 days of the receipt of the notice of the legal proceedings. In the case of **Muhammad Yousuf v. Mairajuddin reported in 1986 SCMR 951**, it was held that if the notice with regard to the change of ownership was not served this by itself would not amount to absence of relationship of landlord and tenant. The eviction application itself is to be treated, as notice and if rent is not tendered directly to the new landlord within the statutory 30 days of the knowledge of change in ownership then the tenant becomes liable for eviction. In the case of **Habib Bank Limited v. Sultan Ahmed reported in 2001 SCMR 678** the tenant acquired knowledge about transfer of ownership in favour of the new landlord on two occasions i.e. when application under Order. I, rule 10, C.P.C. was filed and secondly when the landlord instituted ejectment application against the tenant and despite knowledge of change of ownership through-such proceedings, rent was not tendered to the new landlord and in such circumstances, it was held that it was a case of willful default in the payment of rent making tenant liable for eviction. My lord Mr. Justice Faisal Arab (as his lordship then was) in the similar circumstances held in the case of **Hameed v. Jitendra & others (2010 CLC 561)** as under:-

> *"(a) Sindh Rented Premises Ordinance (XVII of 1979)---*
> *----S. 18---Change of landlord---Notice---Proof---Even when notice sent under S.18 of Sindh Rented Premises Ordinance, 1979, is not dispatched or if dispatched is not actually received by tenant, initiation of rent proceedings in Court become sufficient notice to tenant with regard to change of ownership. Tenant is liable to tender rent directly to new landlord within 30 days of receipt of notice of legal proceedings."*

6. It is gleaned from scanning record and proceedings of all connected petitions that petitioners being tenant committed willful default in tendering rent to the respondent No.1 and the learned trial Court as well as Appellate Court rightly observed this aspect after evaluating the evidence and material made available before them.

7. It was time and again asked by this Court from the learned counsel representing the petitioners as to whom they were paying rent, to which an answer came that rent was received by "a person" who did not give any receipt. Such a flimsy response takes all luster off the case of the petitioners, who if not called "encroachers", what would they be called. At best they should digout identity of "that person" and file a suit for recovery.

8. The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of

jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law.

9. In view of the rationale and deliberation delineated above, the petitions at hand are dismissed alongwith all pending applications.

Karachi
Dated: 12.01.2023.

JUDGE

Aadil Arab